

APPEAL NO. 980016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 13, 1997, a hearing was held. He (hearing officer) determined that appellant (claimant) was not entitled to supplemental income benefits (SIBS) for the 13th compensable quarter. Claimant asserts that her doctor's word that she was unable to work was good enough for the first 12 quarters. She adds that when she was told she had to look for work, she did, and she states that if she had an attorney to complete her paperwork, her entitlement to SIBS would not have been challenged by the respondent (carrier). The carrier replies that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, when she slipped and fell at work. Since that time she has had multiple surgeries to her low back at the L4-5 and L5-S1 area, including fusions. The parties stipulated to points set forth in the benefit review officer's report, including that the impairment rating is 18%, that the filing period for the 13th quarter began on July 1 and ended on September 29, 1997, and that claimant commuted no benefits.

Claimant testified that she cannot sit or stand for very long, that her medicine makes her forgetful, and that she has trouble sleeping. She said that she has tried to substitute teach but had trouble doing it; but she did not attempt to find work during the filing period in question. She emphasized that her doctor, (Dr. V), has not released her to return to work, and she believes she is unable to work. She is an accountant by profession.

Claimant was examined by (Dr. S), an independent medical examination doctor, on July 29, 1997, at which time a functional capacity examination was performed which showed that claimant could do light/medium work with a lifting limit of 20 pounds. Claimant, on cross-examination, said that since September 30th she has been trying to find employment and agreed that there had been no "real change" in her medical condition since the beginning of the filing period in question.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. While claimant states that Dr. V is saying the same thing relative to this filing period as he had for the 12 previous ones that were paid, the carrier has provided medical evidence in this filing period by Dr. S. The hearing officer may weigh the medical evidence just as any other evidence. The hearing officer, in his Discussion, made it clear that he viewed the preponderance of the evidence as showing that claimant had some ability to work (we note that the carrier had no burden to show that the claimant had some ability to work, but this statement makes it clear that the hearing officer did not find that the

preponderance of the medical evidence indicated that the claimant was unable to do any work at all).

The claimant's assertion that she began looking for work when told that she had to does not control what she did during the filing period for the 13th quarter, since she testified that she did not look for work during that time period. Her assertion that if she had an attorney the carrier would not have challenged payment of her SIBS, would appear to be contradicted by her own assertion that she was paid for 12 quarters (she did not indicate that an attorney helped her during those quarters). In addition, the evidentiary difference from prior quarters is the opinion of Dr. S, which the hearing officer gave weight. Finally, the hearing officer specifically asked claimant at the beginning of the hearing whether she wished to proceed without a lawyer, but with ombudsman assistance, and she replied that she wished to proceed.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Christopher L. Rhodes
Appeals Judge